

Exhibit 3

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

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In Re:) Case No. 23-40523
) Chapter 11
THE ROMAN CATHOLIC BISHOP OF)
OAKLAND)Oakland, California
) Wednesday, January 15, 2025
Debtor.) 2:00 PM
)

ORAL RULING ON THE MOTION OF
THE OFFICIAL COMMITTEE OF
UNSECURED CREDITORS (I) FOR
STANDING TO ASSERT, PROSECUTE
AND COMPROMISE ALL CLAIMS AND
CAUSES OF ACTION THE DEBTOR
AND ITS ESTATE HOLD AGAINST
THE INSURERS AND (II) TO BE
SUBSTITUTED AS THE NAMED
PLAINTIFF IN THE INSURANCE
COVERAGE ACTIONS FILED BY
OFFICIAL COMMITTEE OF
UNSECURED CREDITORS OF THE
ROMAN CATHOLIC BISHOP OF
OAKLAND (DOC. 1538)

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE WILLIAM J. LAFFERTY
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES (All present by video or telephone):

For the Debtor: SHANE J. MOSES, ESQ.
EILEEN R. RIDLEY, ESQ.
Foley & Lardner LLP
555 California Street
Suite 1700
San Francisco, CA 94104
(415)434-4507

For Official Committee of Unsecured Creditors: GABRIELLE L. ALBERT, ESQ. (ZOOM)
Keller Benvenutti Kim LLP
425 Market Street
26th Floor
San Francisco, CA 94105
(415)364-6791

1 For The Continental
2 Insurance Company:

MARK D. PLEVIN, ESQ.
Plevin & Turner, LLP
580 California Street
12th Floor
San Francisco, CA 94104
(202)580-6640

4 For Certain Underwriters
5 at Lloyd's of London
6 Subscribing:

BETTY LUU, ESQ.
Duane Morris LLP
865 South Figueroa Street
Suite 3100
Los Angeles, CA 90017
(213)689-7428

18 Court Recorder:

D CHAMBERS
United States Bankruptcy Court
1300 Clay Street
Oakland, CA 94612

21 Transcriber:

RIVER WOLFE
eScribers, LLC
7227 N. 16th Street
Suite #207
Phoenix, AZ 85020
(800) 257-0885

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The Roman Catholic Bishop Of Oakland

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1 OAKLAND, CALIFORNIA, WEDNESDAY, JANUARY 15, 2025, 2:01 PM

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3 (Call to order of the Court.)

4 THE CLERK: Please come to attention. The Court is in
5 session. This is the United States Bankruptcy Court Northern
6 District of California, the Honorable William J. Lafferty
7 presiding.

8 THE COURT: Okay. Good afternoon, everybody. This is
9 Judge Lafferty, and I suggested we gather Zoom-ily (sic) today
10 for something that I hope will be helpful, which is a
11 discussion of any ruling on the committee's motion to be
12 substituted in as plaintiff in the insurance litigation pending
13 before Judge Corley in the district court.

14 So let's go ahead and take appearances.

15 THE CLERK: Your Honor, calling line item number 1 for
16 the Roman Catholic Bishop of Oakland, case number 23-40523.
17 And parties being moved over now.

18 THE COURT: Okay. Okay. Anybody else appearing that
19 we know of?

20 THE CLERK: It doesn't look like it, Your Honor.

21 THE COURT: Well, okay. Perhaps. That's it?

22 THE CLERK: Yes, Your Honor.

23 THE COURT: Okay. All right. Let's have appearances.
24 I think you're muted, Mr. Moses.

25 Still.

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1 THE CLERK: So Your Honor, on our end, it shows that
2 Mr. Moses is unmuted, so perhaps he --

3 THE COURT: Oh, well. I'm sorry then. We don't know
4 what the problem is.

5 THE CLERK: -- needs to change his speaker.

6 THE COURT: Would someone else like to make an
7 appearance, and we'll see if it's us.

8 MS. RIDLEY: Good afternoon, Your Honor. This is
9 Eileen Ridley, Foley & Lardner, on behalf of the debtor RCBO.

10 THE COURT: Okay.

11 MS. RIDLEY: Mr. Moses is my colleague. I believe I
12 have other colleagues online. Can you hear me?

13 THE COURT: Can you hear you, yeah.

14 MS. RIDLEY: Okay.

15 MR. MOSES: Your Honor, this is Shane Moses.

16 THE COURT: There you are. Okay.

17 MR. MOSES: Apologies.

18 THE COURT: That's all right. That's okay. Let's get
19 everybody else's appearances.

20 MS. ALBERT: Good afternoon, Your Honor. Gabrielle
21 Albert, Keller Benvenutti Kim, on behalf of the committee.

22 THE COURT: Okay. Thank you.

23 MR. PLEVIN: Good afternoon, Your Honor. Mark Plevin,
24 Plevin & Turner, for Continental Casualty Company.

25 THE COURT: Okay. Thank you.

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1 MS. LUU: Good afternoon, Your Honor. Betty Luu of
2 Duane Morris on behalf of the London Market insurers.

3 THE COURT: Okay. Thank you.

4 Any other appearances? I know we have other people on
5 the Zoom. Right. That's it?

6 THE CLERK: Yes, Your Honor.

7 THE COURT: Okay. Can I begin with a moment of
8 levity? At least I hope it's levity. Sometimes, I don't know.
9 I am one of those people who is a stickler for how one dresses
10 for a hearing, but counsel in the Foley sweatshirt -- no, I'm
11 going to -- I'm going to -- I'm going to chide myself here.
12 When a judge tells everybody I'd like to see you all in two
13 hours, I really cannot dictate sartorial issues. Okay. So
14 this is in the parlance of our debtor, you have an indulgence.

15 MS. RIDLEY: And I appreciate that, Your Honor. I --

16 THE COURT: No.

17 MS. RIDLEY: -- tried to have a jacket over a shirt
18 so --

19 THE COURT: No, it's okay. When smarty-pants judge
20 tells you I want to talk to you about something and gives you
21 no time to get ready, it's not your fault. Okay.

22 Let me take a moment for a little bit of background
23 here. I'm aware that there is a motion on before Judge Corley
24 in the insurance -- well, what I'll just loosely call the
25 insurance action that's pending in front of her tomorrow on the

1 debtor's request that that matter be abated or held in
2 abeyance. I deduce that it might be helpful to the parties and
3 to Judge Corley, if I am prepared to resolve this motion before
4 that hearing, that I do so. I don't believe that my ruling
5 will be the only matter that would be of interest to folks
6 tomorrow, to either the people making arguments or to judge
7 Corley.

8 But to the extent I can level set, I guess is one way
9 to put it, both my disposition of the motion and to the extent
10 that's dependent on where I think we are in a volatile
11 environment involving a disclosure statement and plan that the
12 committee tells me is unconfirmable as a matter of law and that
13 the debtor tells me is being amended and is, while perhaps
14 imperfect, certainly not to be derailed. So I wanted to give
15 you all some thoughts about that motion.

16 So a little bit of background. As you all know, the
17 action that's in front of Judge Corley was commenced in front
18 of me. And it sought various types of relief with respect to
19 the insurance companies, including declaratory relief and
20 including breaches of contract on theories that the insurers
21 were obligated to defend and weren't doing so and are obligated
22 to indemnify and arguably weren't doing so.

23 One series of motions to dismiss were brought before
24 me. I granted them with leave to amend. At that point, the
25 parties put their heads together and mutually determined that

1 this is a matter for which the reference should be withdrawn.
2 So the Judge Corley, who is a district judge who certainly has
3 experience in determining these kinds of insurance coverage
4 issues, would be able to do that, and I would not, which was
5 perfectly fine with me. Judge Corley obviously has seen quite
6 a few disputes of this type and certainly knows her way around
7 the resolution thereof.

8 And I did not believe there was any reason to think
9 that my losing control, for what it's worth, of that action was
10 going to be so deleterious to our process here that I should
11 suggest that not happen. I think that that, in many ways, has
12 been on a separate track. And that's clearly true because in
13 the meantime, over a period of months, there's been robust
14 motion practice with respect to that action in front of Judge
15 Corley, such that the debtor is on their Fifth Amendment
16 complaint now and such that Judge Corley has very directly told
17 the parties that she expects there to be -- absent the
18 abatement, she expects there to be substantial contemporary
19 progress, even though they're arguably still at a pleading
20 stage, all of which is her discretion and her good judgment.
21 And I have nothing to say about that one way or the other.

22 But now I'm understanding that the committee -- I'm
23 sorry, the debtor, in their mind, synched up with their view of
24 what the plan would accomplish were it confirmed. The debtor
25 has taken the position that it would be smarter, all in all,

1 not to dismiss the action in front of Judge Corley or even
2 necessarily to, for lack of a better word, dispose of it by
3 some sort of trade or other disposition that would basically
4 terminate that matter, but rather more or less to put it on
5 hold while we go through the matters we need to go through to
6 determine whether this plan and disclosure statement should go
7 forward, and if so whether upon a confirmation hearing that
8 plan could be confirmed.

9 So that's a basic background. And I will say this,
10 not meaning to be flip, understandably at a juncture where they
11 are not satisfied with the plan in several respects, including
12 the amounts that the diocese is putting into the survivor
13 trust. Including some aspects of the disposition of the --
14 through the litigation option, the various parties' rights
15 against insurance companies and with respect to also some
16 aspects of the way the debtor is at least implicitly valuing
17 the claims. The committee has objected to the approval of the
18 disclosure statement on the theory that it describes a plan
19 that cannot be confirmed as a matter of law.

20 Certainly, as part of that analysis, informing it as
21 well is the notion that from the committee standpoint, the plan
22 is so deficient and so unattractive to the folks that
23 represents the abuse survivors that the possibility of getting
24 an affirmative vote through that class is about zero. And the
25 committee points out that in those circumstances, it is a rare

1 case, if any, that a bankruptcy court has confirmed a plan over
2 the dissenting vote of the abuse survivors, all of which I take
3 at absolute face value. I think those are good points to make.

4 Whether I find the plan is nonconfirmable as a matter
5 of law is another issue. The voting is one thing. Objections
6 are another. So I have tried to separate those things out in
7 my head, at least to figure out from my bankruptcy-judge-
8 traffic-cop persona how does this go forward and what's the
9 order of progression here. Consistent with their view of the
10 plan, the committee has asked me to take a number of actions
11 that they believe better reflect the appropriate way forward.

12 One of those is that I grant a motion for relief from
13 stay, and I'll speak somewhat, hopefully, illuminatingly, but
14 not conclusively about that at the end of this discussion.

15 Another is that I permit the committee to take on the
16 prosecution of a number of actions that would have as their
17 goal the assertion of claims that the committee believes the
18 debtor is not currently pursuing. And that's a classic
19 derivative standing motion.

20 The third, for today's purposes, is a motion that the
21 committee be allowed to take on basically the role of the
22 plaintiff in what I'm calling the insurance litigation, the
23 litigation in front of Judge Corley. Now, as originally set
24 forth, the committee made the points they wanted to make in
25 that motion, but they did not set it out necessarily under the

1 four-part standard re derivative standing. And that's not a
2 critique. That's an observation.

3 In the response by the debtor, the debtor did set
4 forth the four-part standing for -- four-part standard for
5 derivative standing to assert and prosecute a claim. And
6 although the parties disagree fundamentally about whether
7 certain aspects of that standard are relevant to the analysis
8 we have in light of all the facts and circumstances of the
9 request in light of the insurance litigation, I think nobody
10 has told me that that standard is completely inapplicable here
11 or it wouldn't be helpful in working our way through how we
12 should think about this. So I think there's some agreement
13 there.

14 So the four-part standard that was identified, and
15 it's from Yellowstone Mountain Club LLC, which is at a Westlaw
16 cite that's at page 13 of the debtors' response to the
17 committee's motion. One, a demand has been made upon the
18 statutorily authorized party to take action. Two, the demand
19 is declined. Three, a colorable claim that would benefit the
20 estate if successful exists based on a cost-benefit analysis
21 performed by the Court. And four, the inaction is an abuse of
22 discretion or unjustified in light of the debtor-in-
23 possession's duties in a Chapter 11 case.

24 There was initial disagreement about two of those
25 factors. There was disagreement -- well, one factor and one

1 overall concern. The debtor took the position that the
2 derivative standing standard, although it would be the way to
3 think about this problem, was in many ways inapplicable and the
4 relief was not available to the committee because the action
5 had been commenced. So this is not the what might be the more
6 classic version of this problem, where there is an action that
7 is identified by a party who is not presently situated to bring
8 it. That party writes a letter to the party who has the
9 ability to bring the action, outlines the action, outlines what
10 they believe the benefits of it to be, maybe takes the position
11 about the overall cost benefit analysis, requests that the
12 action be taken, and awaits a response. This has not played
13 out exactly that way.

14 So the argument presented first by the debtor was,
15 well, without that initial question of an action has not been
16 brought, the committee really is not pursuing this in an
17 appropriate way. This fails at that initial stage. And then
18 the case law was cited back and forth for that proposition, the
19 committee taking the position that cases that seem to say that
20 really were distinguishable factually and in other contextual
21 matters.

22 I'm going to agree with the committee on that part. I
23 do not believe that this is a matter that cannot be considered
24 because there was an action pending. I think we're going to
25 get past that objection. To the extent that there was also an

1 objection that, well, the committee did not technically make a
2 request that the action be commenced because one, it has been
3 commenced, and two, they simply didn't couch their request of
4 the debtor in those terms. And therefore, another necessary
5 factor of the test has not been made.

6 I'm going to rule with the committee on that one too,
7 that, in fact, in light of the whole point of this analysis in
8 this context is what's actually happening in this case. What
9 have parties done, what would happen if we go different
10 directions, and what really is to be balanced here between the
11 committee's request that the insurance actions simply go
12 forward in a different manner under their direction or that
13 that not happen.

14 So I think with all those factors, and given the fact
15 that what the committee is complaining about here, and I think
16 understandably, is that while the asset is not necessarily
17 being completely forgone, it is being put on a back burner such
18 that the committee believes it is not being utilized as it
19 should be, given the fact that they're doing that because the
20 debtor has proposed a plan that does suggest that the proper
21 way to go forward is to utilize the insurance assets through an
22 option that claimants have to pursue that sort of relief in a
23 different court and along state law lines.

24 Given that reality, I think the committee -- I
25 wouldn't say that it was futile that they would ask, but it was

1 not going to advance the ball in any sort of analytical way for
2 the committee to ask that the debtor just not pursue their plan
3 and therefore do this. So as to that, I'm going to agree with
4 the committee as well, that those two factors, to the extent
5 they're factors, are not gating and aren't disqualifying for
6 this request.

7 So then we get into what's really at stake here. And
8 I think if we look at the cases and we look at the kinds of
9 analysis courts do, what they're trying to figure out is is
10 there a colorable claim. The quick answer to that question is
11 there is because it's been asserted, and it's survived four
12 motions to dismiss. So technically, the first question, is
13 there a colorable claim? Yes, there is.

14 Then the question becomes what should be done about
15 it. And I agree with the debtor that -- well, I agree with the
16 committee that while the fact that an action is pending isn't
17 disqualifying, the fact that an action is pending does change
18 the way we think about these things. The action is out there.
19 It is pending. The debtor has prosecuted it.

20 The debtor's position right now is we've spent a
21 million-and-a-half on this litigation. We're almost done with
22 the pleading stage. And frankly, we have a plan that in our
23 mind, while it undeniably shifts the burden of these
24 determinations away from the debtor and onto the claimants,
25 nonetheless allows for some appropriate understanding and

1 disposition of the question whether there is insurance
2 coverage, number one. If so, who's on the hook. And beyond
3 that, whether there are rights -- which is both with respect to
4 the debtor, in name, at least, with respect to the liability,
5 but then possibly with respect to the insurance companies as
6 the parties who may be paying a significant part of this, if
7 not all of it in some circumstances.

8 So what's in front of me is not the traditional simple
9 case of the debtor has decided simply not and never to pursue
10 an action on the theory that it's a bad idea. The classic
11 instance of that might be you don't want to sue your most
12 important trade creditor for a preference because they don't
13 have to do business with you, and it's better to keep that
14 relationship than to terminate it, effectively. So what the
15 debtor is telling me is that we're not terminating this action.
16 We're not trading it for something else so that it is no longer
17 available for use. We're asking that it be put on hold for a
18 while we play out, in our view, what we think is at least at
19 the moment a confirmable plan.

20 The committee's position is that to the extent that is
21 a request that I honor the business judgment of the debtor,
22 that's inappropriate. We had a long discussion about that and
23 the basis for that argument by the committee during arguments
24 last week. And I pressed Mr. Burns somewhat on the assertion
25 that I had found in the committee's papers that any deference

1 to what we might think of as business judgment rule in favor of
2 the debtor was inappropriate, where the debtor's judgment was
3 arguably tainted and arguably tainted by a conflict. So we
4 explored to some depth whether this was a conflict or not. And
5 not meaning to be flip, but Mr. Burns, in the course of that
6 argument, I think, retreated a bit from the position that it
7 either were a conflict or needed to be one to change the
8 analysis for a business judgment rule. And that conversation
9 went where it went.

10 I will say, for what it's worth, I will reiterate my
11 skepticism that if the committee is alleging a conflict here, I
12 just don't see this that way. This would be a conflict if
13 there were two entities to whom the debtor owed a duty and the
14 duties were equal and they were adverse and one could not
15 satisfy one without disappointing the other. And I just don't
16 see this that way.

17 The debtor is a fiduciary, that's absolutely true, to
18 the unsecureds. But the debtor's decision, in my view, to
19 reformulate the way one would go after and monetize and utilize
20 an asset of the estate, the insurance, the right to insurance,
21 and the proceeds, the debtor's decision to do that in one way
22 rather than another is not the sort of stark I'm favoring one
23 party over another, where I have duties to both. Scenario that
24 I think describes a conflict.

25 So in my view, it's not a conflict, nor do I see

1 anything in the process that's been revealed to me so far, by
2 which the debtor made that decision, that -- while the
3 committee may not enjoy that decision, may think it's the wrong
4 one, and may someday even convince me that's the case, for sort
5 of threshold gate purposes, I don't see anything in the process
6 that the debtor has taken on here or that has led to the
7 decision that is itself wrongful or corrupt or nefarious or
8 anything that would give me reason to pause about how they got
9 from the initial analysis to the result, which is here's a plan
10 that we think is going to work.

11 So to the extent that we begin with the conflict
12 analysis, I will tell you, I don't find that compelling. I
13 don't think it's a conflict. I think this comes down to a
14 question of, among various options, can I make a decision right
15 now that the option to pause this and not to have it go forward
16 as robustly as the committee might like is necessarily harmful
17 to the estate or is necessarily even the wrong answer. And the
18 bottom line is I cannot do that at this point.

19 The beauty of Chapter 11, as you all know, is that
20 sometimes we have several balls in the air, and that actually
21 helps. This is one of those moments. The debtor has proposed
22 a plan. We will continue the discussion tomorrow about whether
23 the disclosure statement on file now describes a plan that is
24 patently unconfirmable. I have not made up my mind about that
25 in terms of all the arguments that have been made to me and the

1 papers that I have so far.

2 What I can say, and if this is helpful to the parties
3 and to Judge Corley, as I sit here today, I do not have -- I
4 have not reached the conclusion, as I sit here today, that this
5 plan is unconfirmable as a matter of law. Now, what will
6 happen with the vote is a whole other question, and I am very
7 mindful of that and how we talk about how we proceed from here
8 to a confirmation hearing is something we'll talk about
9 tomorrow and probably after tomorrow. But to the extent that
10 this would all turn on me determining right now before Judge
11 Corley will have her hearing on the abatement motion that Judge
12 Corely, full speed ahead. Whatever you want to do. This plan
13 is a nonstarter. I have not made that conclusion yet.

14 It doesn't mean it's perfect. It doesn't mean there
15 won't be lots of robust discussion tomorrow about why I should
16 come to the conclusion that the plan is unconfirmable, and I
17 will listen to all those arguments. And there's also likely to
18 be lots of discussion about what we need to do to make the plan
19 better than it is. All that's fine. But in my view, what I
20 have in front of me now is simply the debtor's decision that
21 the better course of action, for now -- and not for all time.
22 We're not trading the asset. We're not terminating the asset.
23 For now, the better course of action is to pursue a plan that
24 they believe is, at least theoretically, confirmable, as to
25 which there is no gating objection, because of which I have to

1 stop this process, and that is an intelligent assessment of the
2 risks and rewards.

3 So on all that basis, I think it's appropriate for me
4 to deny the motion. I'll make a couple of other comments.
5 This is not for all time. As I've said in other context, time
6 is a long thing. And if we end up in a situation where I am
7 convinced, either by legal arguments or by the vote of
8 constituents, that the plan the debtor proposes cannot be
9 confirmed, we'll be in a different place. And at that point,
10 it will be -- there will be nothing wrong with reconsidering
11 whether, as part of that scenario, the better course is to is
12 to allow the committee to be more of a protagonist here than
13 they are right now.

14 I will make another couple of comments. In coming to
15 this conclusion, I'm very mindful of the abuse of discretion
16 standard that's referenced. And I think it's referenced both
17 with respect to how the parties who are jostling over these
18 kinds of actions should look at their choices and how a court
19 should review those choices once they are made, perhaps even
20 how a reviewing court would review my choice if someone were to
21 tell them that I made a mistake.

22 But abuse of discretion, as you all know, is an
23 extremely broad standard. And what it basically -- for
24 appellate review standards, what it means is the party making
25 the decision has proceeded in a way -- they have chosen a rule

1 that is consistent with the decision to be made. And they have
2 exercised that discretion in a way that is not implausible or
3 unlikely or totally without support from the factual record
4 before us.

5 I think I can say at the moment, without making a
6 final decision on this, for abuse of discretion purposes, I
7 think the debtor looking at this from a cost benefit analysis
8 of is it worth pursuing at full speed the insurance litigation
9 in front of a Judge Corley versus this plan, I think, without
10 deciding whether that's ultimately the right decision, I think
11 I can say that it strikes me that from an abuse of discretion
12 standpoint, that is not so wrongful a decision that I would
13 stop it in its tracks right now.

14 I will also remark that the debtor and all the parties
15 are certainly mindful of what is actually at stake before Judge
16 Corley now, and there are certainly arguments. While the
17 matter is colorable, there are arguments that it's a little
18 less, oh, I don't know, disputatious than it might have been
19 some time ago, as the insurance companies agree that they're
20 going to -- they're going to defend actions. That's maybe not
21 as salient an argument as it had been before. And as well as
22 Mr. Plevin and others make remarks to me that for the indemnity
23 purposes, that's not really ripe until one gets a judgment. I
24 think Judge Corley is very well aware of that doctrine, and she
25 can make those decisions certainly.

1 And to the extent that there's a virtue in determining
2 over time who is responsible at different times for the
3 insurance obligations and who's primary, who's excess, whether
4 things have been exhausted or not, those are all matters that
5 are in front of Judge Corley but for which there are unlikely
6 to be answers tomorrow or the next day. Those would play out
7 over some time.

8 So that's all to suggest that the exigency of
9 immediately proceeding full speed with the insurance litigation
10 may not be of the highest order either, in the context of where
11 we are today. So I will make all those observations.

12 I will also observe that the committee's request to be
13 allowed to exercise the privilege of the debtor, given the
14 decision I'm making, I don't have to go into that in detail. I
15 will tell you. I paused long over that. I thought that was
16 potentially of concern. And although the committee was quite
17 sincere in telling me that this motion to -- that I was the
18 person to whom this motion should be brought re standing,
19 having said that, this was not an attempt to end run something
20 Judge Corley would do or otherwise not do or otherwise
21 complicate that matter unnecessarily.

22 I take the committee's statement at face value that
23 this was a good faith attempt to get the jurist whom they
24 believe has the power to decide who should be prosecuted and
25 actually to make that decision. Having said that, it is not

1 lost on me that deciding that in the committee's favor right
2 now, especially in light of the abatement motion, would likely
3 have been at least distracting, if not a stronger word than
4 distracting, to Judge Corley's determination of the abatement
5 motion.

6 So for all those reasons, and with enormous respect
7 for the wonderful arguments that everybody made here -- I'm
8 sorry Mr. Burns isn't here to hear my flattery of him. I think
9 he did a wonderful job conceiving of the problem from his
10 perspective. But for all those reasons, I'm going to deny the
11 committee's motion to be entitled to assert standing with
12 respect to the insurance motion. Again, this is not for all
13 time. This is in light of the facts and circumstances present
14 now. And if those change, well, we'll take the question up
15 again when those factors change.

16 Unless someone has a question about this, certainly,
17 Mr. Moses, to the extent you folks are the prevailing party, do
18 not try to encapsulate all of my rulings here or all my
19 impressions. You can simply say that under FRBP 7052, for the
20 reasons stated on the record, the Court has denied the motion.

21 Unless somebody has a particular request to this, I
22 have two other matters I want to touch on very briefly for
23 tomorrow.

24 Anybody? We're good?

25 Okay. And I assume that people will inform Judge

1 Corley of this outcome. You're certainly free to do that.

2 Okay.

3 With respect to the motion for relief from stay, I am
4 leaning toward granting that. But I am concerned about the
5 following. And to the extent anyone can give some thought to
6 this and give me some guidance or thoughts or suggestions
7 between now and tomorrow, I'd be grateful.

8 I'm very mindful of the fact that these matters have
9 been -- well, the matters that are in front of the coordination
10 judge in Alameda County are the matters from which maybe as
11 many as six actions would be selected to represent bellwether
12 litigation. That's fine. I'm mindful of two things that Mr.
13 Simons told me with great candor, and I appreciate his candor
14 the other day, that of those six, three of those did not
15 involve the Oakland diocese. And one, I think, had come to a
16 different resolution.

17 So whereas before, I might have been somewhat
18 heartened by there were six matters kind of ready to go, that
19 doesn't seem to be the case now. So I am a little bit worried
20 about the efficacy of granting the motion for relief from stay
21 if one would go back to square one, even to determine what
22 other four matters would be brought, if six seems to be a
23 reasonably representative number.

24 The second matter that concerns me is I'm mindful of
25 the fact that the judge who had been presiding over this matter

1 now has a different judicial role, and there was a new judge
2 appointed to this. And my understanding, also from Mr. Simons,
3 and I think this was confirmed by others, is I don't remember
4 who that judge is, but whoever that person is has not yet had a
5 hearing of any sort in the consolidated matter. So I'm a
6 little bit concerned that -- again, a granting a motion for
7 relief from stay, I'm just not sure what is going to happen in
8 any kind of prompt schedule. So I'm not suggesting there's an
9 answer to those questions today, but I want to take up this
10 question as well tomorrow and just see what else people can
11 tell me about those questions and about timing and about the
12 efficacy of granting a motion and letting the matters go
13 forward in light of those factors.

14 Secondly, with respect to the committee's other motion
15 to take on standing to prosecute various actions, I understand
16 that the committee the other day had said they would stand on
17 the papers. I know that the debtor's counsel, one, has some
18 points that they want to make in opposition to that motion.
19 And two, their schedule is such that they're asking that that
20 matter be argued first. That's perfectly fine with me. I'm
21 assuming that if there is argument by the debtor, the committee
22 will want to respond at the lectern, and that's understandable.
23 Okay. But the thing I'm grappling with here is what is, to me,
24 kind of an obvious gating question, and I just want to know
25 either why this isn't an obvious gating question or what you

1 guys think we should do about it.

2 If the single biggest piece of this, and not to
3 denigrate all the things the debtor would like to do, that's
4 fine. If the single biggest and most obvious piece of this is
5 an alleged fraudulent transfer or other clawback action with
6 respect to the money that was transferred from the debtor to
7 OPF prior to the commencement of the case, there seems to be an
8 unarticulated disagreement between the parties as to the
9 consequence of the debtor's position that while those monies
10 might have been property of the estate for broadest 541
11 purposes, they were not usable by the debtor for various
12 purposes because of the terms of the grant. So they are
13 restricted in some way.

14 So the debtor's position is, well, they may be estate
15 funds, but clawing them back is really kind of meaningless. So
16 one wouldn't undertake the effort because they're property
17 estate, and they aren't. They're not usable to pay creditors.
18 So therefore, a fraudulent transfer action really is neither
19 here nor there.

20 The committee seems to disagree with that position,
21 and maybe for several reasons. And it may be they may include
22 that in order to take advantage of that kind of argument, the
23 debtor would really have to have something more akin to a trust
24 agreement or something that would more satisfy the requirements
25 of California law that an asset not be disposable by the party

1 to whom it was given, by the donee.

2 So my question for tomorrow will be whether we should
3 try to figure out a mechanism to answer that question before we
4 get into whether the committee should be taking on matters that
5 the that the debtor doesn't believe should be taken on if
6 there's a gating legal issue as to whether that would benefit
7 the estate in any event. So if parties could let appropriate
8 folks know that that's on my mind and if people could be
9 prepared to talk about that, I'd be grateful. This is
10 nothing -- this is not within light years of a decision on the
11 committee's motion, which I think is very intriguing, but it
12 does pose for me a question that if I could answer that at the
13 outset, I might be a lot smarter.

14 So in that context and in that vein, I would pose it
15 back to you folks and ask that we address that fairly early in
16 the presentation. Okay. I mean, there's lots of ways we might
17 do that. There might just be a contested matter now that we
18 could create one that we could just determine in the course of
19 the bankruptcy without having to file a lawsuit. It may be
20 that you can't do that, and so the committee's position would
21 be, no, we have to follow the lawsuit and we'll have that
22 fight. That's fine. But it seems to me that's fairly gating.
23 So I wanted to get that out there.

24 All right. Okay. Anything else from anybody?

25 Thank you for your patience. Thank you for your

1 wonderful arguments on January 8th and before. And I look
2 forward to seeing all of you tomorrow. Okay. Thank you very
3 much.

4 (Whereupon these proceedings were concluded at 2:36 PM)

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I N D E X

RULINGS:

PAGE LINE

Committee's standing motion is denied

18 3

C E R T I F I C A T I O N

I, River Wolfe, certify that the foregoing transcript is a true
and accurate record of the proceedings.



/s/ RIVER WOLFE, CDLT-265

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7227 N. 16th Street, Suite #207

Phoenix, AZ 85020

Date: January 17, 2025

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